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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/092,696 06/05/98 BARCELON

S 5468-07-LAV

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IM52/0227

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EXAMINER

LINDA A. VAG
WENER -LAMBERT COMPANY
PATENT DEPARTMENT
201 TABOR ROAD
MORRIS PLAINS NJ 07950

WONG, L

ART UNIT

PAPER NUMBER

1761

DATE MAILED:

02/27/01

14

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/092,696

Applicant(s)

Barcelon et al.

Examiner

Leslie Wong

Group Art Unit

1761



☒ Responsive to communication(s) filed on Feb 16, 2001

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire three month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1, 3-5, 7-9, 11-14, and 16-18 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1, 3-5, 7-9, 11-14, and 16-18 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 4, 5, 8, 14, 17, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Record et al (US Patent No. 5,372,824).

Record et al disclose the combination of flavor and N-ethyl-p-menthane-3-carboxamide in the amounts claimed for use in chewing gums (see entire patent).

The claims differ as to enhancement and the specific flavors.

It would have been obvious to a person of ordinary skill in the art, at the time the invention was made to use any flavor in that of Record et al because the choice of flavor is seen to be no more than a matter of choice and well-within the skill of the art. Applicant attaches no criticality to the flavor and discloses fruit, herbal, and spice flavors and specifically states that “(o)ther flavors known to those skilled in the art may also be enhance” (see page 4, second full paragraph).

Enhancement would be obvious to that of Record et al as the same components are used.

Claims 1, 3-5, 7-9, 11-14, and 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cherukuri et al (US Patent No. 5,009,893).

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Cherukuri et al disclose the combination of a flavor (e.g. mint and cherry) and N-ethyl-p-menthane-3-carboxamide in the amounts claimed for use in chewing gums and confections (see entire patent).

The claims differ as to enhancement and the specific flavors.

It would have been obvious to a person of ordinary skill in the art, at the time the invention was made to use any flavor in that of Cherukuri et al because the choice of flavor is seen to be no more than a matter of choice and well-within the skill of the art. Applicant attaches no criticality to the flavor and discloses fruit, herbal, and spice flavors and specifically states that “(o)ther flavors known to those skilled in the art may also be enhance” (see page 4, second full paragraph).

Enhancement would be obvious to that of Cherukuri et al as the same components are used.

In the absence of unexpected results, it is not seen how the claimed invention differs from the teachings of the prior art. Applicant's claims are drawn to a combination of known components which produces expected results, see In re Kerkhoven 205 USPQ 1069 and In re Gershon 152 USPQ 602.

All of the claim limitations have been considered. None of them are seen as serving as basis for patentability.

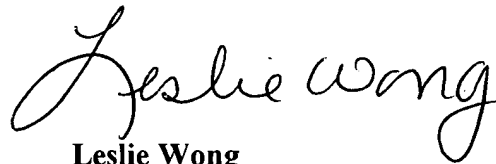
No claim is allowed.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leslie Wong whose telephone number is (703) 308-1979. The examiner can normally be reached on Tuesday-Friday from 6:30 AM to 5:00 PM.

The fax number for this Group is (703) 305-7718.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0661.

A handwritten signature in cursive script that reads "Leslie Wong".

Leslie Wong
Primary Examiner
Art Unit 1761

LAW
February 23, 2001